IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

JAMES SCOTT JOHNSON, Respondent, v. GARY L. OLDFORD and KELLY J. CARROLL (a/k/a Kelly J. Oldford), Appellant.	No. 37755-1-II UNPUBLISHED OPINION

Hunt, J. — Kelly Carroll, formerly Kelly Oldford,[1] appeals the trial court's specific performance order requiring her to execute a deed in favor of James Johnson and the dismissal of her counterclaims for slander of title and wrongful filing of a lis pendens. She argues that the trial court erroneously concluded that a May 11, 2004 letter she wrote to Johnson was an enforceable contract because (1) the letter did not include an adequate description of the property to be conveyed and, thus, the statute of frauds bars its enforcement; (2) there was no meeting of the minds on the contract's material terms; (3) even if there was a contract, Johnson did not perform all of the contract's terms; (4) Johnson did not prove the elements of the part performance doctrine; and (5) Johnson did not prove the elements of promissory estoppel. Carroll also requests attorney fees on appeal. We affirm the trial court's specific performance order, affirm its dismissal of Carroll's counterclaims, and deny Carroll's request for attorney fees.

[1] The parties refer to Carroll as "Kelly Oldford." Because "Carroll" is the name on the pleadings, and to avoid confusion with her former husband, Gary Oldford, we refer to her by her current name, Kelly Carroll.

FACTS

I. Real Estate Contracts

During their marriage, Kelly Carroll and Gary Oldford purchased two adjacent lots in Port Ludlow, Washington. These lots are legally described as:

> Lots 1 and 2, Area 4, Port Ludlow No. 1, according to the official Plat thereof recorded in Vol. 5 of Plats, pages 26 to 32 inclusive, records of Jefferson County, Washington.

Clerk's Papers (CP) at 2. There is a house on Lot 2; Lot 1 is vacant.

In 2003, Carroll and Oldford dissolved their marriage. The dissolution decree awarded Carroll and Oldford each "an undivided 50 [percent] interest as tenants in common in the improved and unimproved real property." CP at 3. The decree also ordered them to list Lots 1 and 2 for sale within 14 days from the date of the decree, which they failed to do.

In 2004, the mortgage holder sent Carroll and Oldford a notice of trustee's sale because they had failed to make payments on the loan for Lot 2. Lot 1 was not subject to the loan and, therefore, not subject to the trustee's sale.

When their friend James Johnson learned that Carroll and Oldford were attempting to sell both Lots 1 and 2, he applied for a loan but qualified for only a $120,000 loan, which was not enough to purchase both lots. In April 2004, Johnson's domestic partner, Melissa Douke, drafted a real estate sale contract offering to purchase Lot 2 (the lot with the house) for $120,000 and a second real estate sale contract offering to purchase Lot 1 (the vacant lot) for $12,000, to be paid in installments. Neither of these documents included legal descriptions for Lots 1 or 2. Johnson signed the real estate sale contract for Lot 2 but not the real estate sale contract for Lot 1.

Douke sent both of these agreements to Oldford, who signed both and sent them to Carroll. Carroll signed the real estate sale contract for Lot 2, but refused to sign the real estate sale contract for Lot 1. On May 11, Carroll wrote Johnson and Douke a letter, which she included when she returned the signed real estate sale contract for Lot 2. In that letter, she wrote:

> Hi Scott [and] Melissa,
>
> I am so happy that you guys are buying the house. . . . I know that you want to purchase the lot and I don't blame you. I would like to be paid in full. I cannot finance the property. *You can give Gary the car & me [$]6000.00.* I cannot sign anything over right now. *When you guys purchase the home and sell [your] property in Paradise Bay you can buy the lot.* I have been thru [sic] alot [sic] and have lost everything. *I want you guys to buy the lot and I want you to know that I will sit on it till you guys have the money. (Promise).* . . . Call me so I know what you decide.

Exhibit 9 (the May 11 letter) (emphasis added).

In June, Oldford and Carroll signed separate statutory warranty deeds conveying their tenant-in-common interests in Lot 2 to Johnson.[2] The transaction did not close until late August, and Johnson did not take possession until September.

On September 10, Douke prepared a purchase agreement for Lot 1, which stated that Johnson would give Oldford a vehicle for his interest in Lot 1 and Carroll $6,000 for her interest.[3] Oldford signed this agreement, but neither Johnson nor Oldford presented the agreement to

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[2] Carroll received only $134 from the Lot 2 sale due to the Lot 2 mortgage and her bankruptcy proceedings.

[3] At trial, Oldford claimed that this agreement was "just a scam" to help Oldford acquire Carroll's one half interest in Lot 1. Oldford claimed that under this "scam" agreement, unbeknownst to Carroll, Johnson was supposed to pay Oldford an extra $40,000 for Lot 2; the car was to be part of this secret deal for Lot 2 and had nothing to do with Lot 1. Oldford further claimed that Johnson signed another agreement transferring Lot 1 back to Oldford, and that Johnson was supposed to mail him a copy of this agreement but never did.

Carroll. Oldford took possession of Johnson's vehicle.

On September 11, Douke and Johnson sent Carroll a letter stating (in part):

> We are getting the [$]6000.00 together for your half of the 2nd lot [Lot 1]. I tried the # you gave, with no luck. So here is mine. . . . I'm planning to expand the drainfield [sic] onto that lot, so time is of the essence for me. (Rainy season)
> So give me a call, and we'll, "get er done."

Ex. 12 (the September 11 letter). Carroll received the letter, but she did not respond because at this point she believed her interest in Lot 1 was worth more than $6,000 and she did not want to sell at that low price. According to Carroll, she had called Johnson and informed him she would not sell Lot 2 for $6,000.[4]

In October or November, Oldford listed Lot 1 for sale. When the real estate agent visited Lot 1 to "mark out the lot," Douke told the real estate agent that Johnson owned the lot and "to get off the property." In November, Johnson recorded the September 10 purchase agreement that he and Oldford had signed. Both Carroll and Oldford refused to deed their interests in Lot 1 to Johnson. In May 2006, Carroll contacted Johnson and told him she would not sell Lot 1 to him for $6,000. At some point later that year, Carroll and Oldford again attempted to sell Lot 1 through a real estate agent.

In January 2007, the Port Ludlow Maintenance Commission sent a letter to Carroll and Oldford, "c/o James Johnson,"[5] advising them that the Commission would "take all the necessary steps to collect any and all past due assessments," which Carroll and Oldford had not paid on Lot

[4] Carroll claimed she called Johnson in May, but the trial court later found that, if such a call occurred, it had occurred after the September 11 letter.

[5] The Commission communicated with Johnson because it was unable to contact either Carroll or Oldford.

1 since 2001. Thereafter, Johnson contacted the Commission and reached an agreement under which he (Johnson) paid the 2001 and 2002 assessments and late fees for Lot 1, totaling $779.92, and the Commission deferred legal action on the remaining unpaid assessments. That same month, Johnson also paid $182.62 in delinquent property taxes for 2004 in order to prevent the county from foreclosing its tax lien on Lot 1.

Later that year, in June 2007, Carroll "set up payments" to pay some unidentified portion of the Commission assessments. She also provided her new address to the county treasurer so that future tax statements for Lot 1 would be mailed to her.[6]

II. Litigation

In September 2006, Johnson brought a specific performance action against Carroll and Oldford to compel them to deed their interests in Lot 1 to him (Johnson).[7] Carroll asserted the statute of frauds as a defense to the specific performance claim. Carroll counterclaimed for slander of title, tortious interference with a business contract, and frivolous filing of a lis pendens. Carroll also filed a cross claim against Oldford, asking the trial court to partition their interests by ordering a sale of Lot 1 at fair market value.

The trial court concluded that Oldford was legally bound to convey his interest in Lot 1 to Johnson by virtue of the real estate sale contract he had signed in May 2004 and the September

[6] Carroll asserted that she did not receive the 2006 or 2007 tax statements because Johnson had changed the address with the county auditor. The record does not show, however, that Carroll investigated to determine why she was not receiving regular tax statements for Lot 1 during those years.

[7] Johnson also sought damages for defects in the house on Lot 2. The trial court denied his damage claim, which denial Johnson does not appeal.

purchase agreement.[8] With regard to Carroll, the trial court concluded that (1) the May 11, 2004 letter was "a counteroffer of unilateral contract"; (2) Johnson had accepted this offer, causing the contract to become enforceable when he "performed certain conditions [required by the May 11 letter] and tendered the $6,000 payment to [Carroll]," which she refused to accept; and (3) despite Carroll's statute of frauds defense, the trial court concluded it could enforce the contract under either the part performance doctrine or the doctrine of promissory estoppel. Thus, the trial court ordered specific performance and required Carroll to convey her interest in Lot 1 to Johnson.

The trial court further found that Johnson was justified in filing the lis pendens asserting an interest in Lot 1 and dismissed Carroll's counterclaims for slander of title, tortious interference with a business contract, and frivolous filing of a lis pendens.

Carroll appeals.

ANALYSIS

Carroll argues that the trial court erred in ordering her to execute a deed for Lot 1 in favor of Johnson and in dismissing her counterclaims. We disagree.

I. Standard of Review

We review a trial court's findings of fact and conclusions of law to determine whether substantial evidence supports the trial court's findings and, if so, whether the findings support the conclusions of law. *Scott v. Trans-Sys., Inc.*, 148 Wn.2d 701, 707-08, 64 P.3d 1 (2003).

[8] Oldford is not a party to this appeal and has not separately appealed the trial court's specific performance order.

Substantial evidence is a quantum of evidence sufficient to persuade a rational fair-minded person the premise is true. *Wenatchee Sportsmen Ass'n v. Chelan County*, 141 Wn.2d 169, 176, 4 P.3d 123 (2000). If the evidence satisfies this standard, we will not substitute our judgment for that of the trial court, even though we might have resolved a factual dispute differently. *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wn.2d 873, 879-80, 73 P.3d 369 (2003) (citing *Croton Chem. Corp. v. Birkenwald, Inc.*, 50 Wn.2d 684, 314 P.2d 622 (1957)). We review findings of fact erroneously labeled "conclusions of law" as findings of fact, and conclusions of law labeled "findings of fact" as conclusions of law. *Willener v. Sweeting*, 107 Wn.2d 388, 394, 730 P.2d 45 (1986). We treat unchallenged findings of fact as verities on appeal. *Draszt v. Naccarato*, 146 Wn. App. 536, 541, 192 P.3d 921 (2008).

II. May 11 Letter Enforceable Under Part Performance Doctrine

Carroll argues that the May 11, 2004 letter did not create an enforceable contract because it did not include a proper legal description and, thus, the statute of frauds precludes its enforcement. We agree that the statute of frauds would bar enforcement of the May 11, 2004 letter if an exception did not apply.[9] Here, that exception is "part performance."

[9] The real property statute of frauds, RCW 64.04.010, "applies to '[e]very conveyance of real estate, or any interest therein, and every contract creating or evidencing any encumbrance upon real estate.'" *Pardee v. Jolly*, 163 Wn.2d 558, 566, 182 P.3d 967 (2008) (quoting RCW 64.04.010). Under the statute of frauds, a contract for the sale or conveyance of land, including an option contract, must be in writing and include the legal description of the property sufficient to identify the property without resort to oral testimony. *Id*. at 566-67; *Key Design, Inc. v. Moser*, 138 Wn.2d 875, 881, 983 P.2d 653 (1999) (quoting *Martinson v. Cruikshank*, 3 Wn.2d 565, 567, 101 P.2d 604 (1940)); *Home Realty Lynnwood, Inc. v. Walsh*, 146 Wn. App 231, 237, 189 P.3d 253 (2008). For platted real property, the legal description must include the "correct lot number, block number, addition, city, county and state." *Pardee*, 163 Wn.2d at 567 (citing *Martin v. Seigel*, 35 Wn.2d 223, 229, 212 P.2d 107 (1949)).

A. Contract Terms

In addition to contending the statute of frauds bars enforcement of the contract, Carroll argues that the trial court erred by ordering specific performance because (1) the trial court made no explicit findings that the parties had expressly agreed on terms or that Johnson had expressly accepted the offer contained in the May 11, 2004 offer letter; (2) the May 11, 2004 letter fails to include material terms of the agreement, such as the price, the time for closing, and the identity of the parties; (3) if the May 11 letter was an offer of a unilateral contract, Johnson did not accept because the letter required Johnson to accept by telephoning her; (4) if the May 11 letter was an offer, Johnson did not perform all of the conditions because he did not sell his Paradise Bay property; and (5) Carroll revoked the offer before Johnson performed. These arguments fail.

"An offer of unilateral contract is an offer to enter into a contract upon the doing of a bargained for act by the offeree." *Knight v. Seattle-First Nat'l Bank*, 22 Wn. App. 493, 496, 589 P.2d 1279 (1979). In a unilateral contract, the offeror's offer or promise is not binding until the other party performs. *Flower v. T.R.A. Indus., Inc.*, 127 Wn. App. 13, 27, 111 P.3d 1192 (2005) (quoting *Multicare Med. Ctr. v. Dep't of Soc. & Health Svcs.*, 114 Wn.2d 572, 584, 790 P.2d 124 (1990)). An offeror may revoke the offer in the unilateral contract at any time before the offerree performs. *Knight*, 22 Wn. App. at 496 (quoting *Cook v. Johnson*, 37 Wn.2d 19, 23, 221 P.2d 525 (1950)).

1. Meeting of the minds on sufficiently clear contract terms

Carroll's first two arguments fail because the trial court implicitly concluded that Johnson and Carroll agreed on the contract's sufficiently clear terms. The trial court concluded that the

May 11 letter was a unilateral offer of contract under which Johnson could purchase Carroll's one-half share of Lot 1 from her for $6,000.[10] The trial court further concluded that Johnson accepted this offer by performing "all acts required of him by the unilateral contract offer." Thus, Carroll offered specific terms, which Johnson accepted when he performed those terms.

Furthermore, the May 11 letter specified the material terms that Carroll now claims it lacked: It identified the price ($6,000 for Carroll's interest and the car for Oldford's), the time for closing ("when you guys purchase the home"), and the parties (Johnson and Carroll). Ex. 9. Although the May 11 letter did not contain a legal description, the trial court found that there was no ambiguity or question about the identity of the property to which the letter referred.

2. Acceptance by telephone call

Carroll assigns error to finding of fact 12, which states in part: "Mr. Johnson testified that he did call [Carroll] and had a discussion with her after receiving the May 11, 2004 letter." CP at 5. The record does not support this finding because Johnson testified that he never personally called Carroll to accept the offer contained in the May 11 letter. But, Johnson testified that Douke, his domestic partner who had handled all of the paperwork for the purchase of both lots, "had talked to her [Carroll]." Douke also testified that she had a telephone conversation with Carroll. We hold that the telephone call from Douke (as Johnson's agent) to Carroll was sufficient to satisfy the May 11 letter's requirement that Johnson call Carroll to tell her what he had decided.

3. Valid waiver of Paradise Bay property sale condition

[10] As previously noted, in this letter Carroll also agreed that Oldfield could sell his one-half interest in Lot 1 for Johnson's vehicle.

Carroll asserts that the letter, if it was a contract, also required Johnson to sell his "property in Paradise Bay" and that Johnson has not fulfilled this term. Although Johnson did not sell his Paradise Bay property, Johnson argues that this condition was for his benefit and, therefore, he could waive that condition. Johnson is correct. A party may waive a contract provision that is meant for that party's benefit. *Mike M. Johnson, Inc. v. Spokane County*, 150 Wn.2d 375, 386, 78 P.3d 161 (2003).

The trial court made no findings or conclusions about Johnson's failure to sell the Paradise Bay property. Nonetheless, having concluded that "Johnson had performed all acts required of him by the unilateral contract offer," the trial court implicitly concluded that the May 11 letter did not require Johnson to sell the Paradise Bay property before buying Lot 1. CP at 11, Conclusion of Law 6.

4. Carroll did not Revoke Offer before Johnson Performed

Carroll further argues that, if the May 11 letter was an offer, she telephoned Johnson and revoked that offer before Johnson accepted. Although Carroll may have called Johnson in 2004 to revoke the offer, the trial court found that if such call occurred, it was after Johnson closed on Lot 2 and gave the car to Oldford, and after Carroll received Johnson's September 11 letter tendering payment. Thus, Carroll could no longer revoke her offer of unilateral contract because Johnson had already performed. *See Knight*, 22 Wn. App. at 496.

B. Part Performance

Carroll argues that the trial court erred when it enforced the May 11 letter under the doctrine of part performance. Again, we disagree.

In some circumstances, under the part performance doctrine, the court will grant relief from the statute of frauds where "'*to enforce the statute* [*of frauds*] *would defeat the very purpose for which it was enacted—i.e.,* the prevention of fraud arising from the *uncertainty* inherent in oral contractual undertakings. '" *Berg v. Ting*, 125 Wn.2d 544, 558, 886 P.2d 564 (1995) (quoting *Miller v. McCamish*, 78 Wn.2d 821, 829, 479 P.2d 919 (1971)). Under the doctrine of part performance, a court may enforce a contract that violates the statute of frauds if the party asserting the doctrine can show: "'(1) delivery and assumption of actual and exclusive possession; (2) payment or tender of consideration; and (3) the making of permanent, substantial and valuable improvements, referable to the contract.'" *Pardee v. Jolly*, 163 Wn.2d 558, 567, 182 P.3d 967 (2008) (quoting *Powers v. Hastings*, 93 Wn.2d 709, 717, 612 P.2d 371 (1980)). Although there is no strict requirement for how many of these factors must be present, generally a party must show at least two of these factors. *Berg*, 125 Wn.2d at 558.

Here, the trial court concluded:

> Mr. Johnson is entitled to specific performance under the "part performance" doctrine. He took delivery and possession of the Lot 1 property, he paid the consideration for the property to Mr. Oldford and tendered consideration to [Carroll], he paid some of the overdue taxes and the Port Ludlow Maintenance Commission fees owing on Lot 1, and he also maintained the lot. The defendants [Carroll and Oldford] did nothing with respect to Lot 1 after the summer of 2004, except to show it to real estate sales persons and pay a portion of [the] real property taxes that were owing on Lot 1.

CP at 12, Conclusion of Law 7.

The record supports the trial court's conclusion. Johnson tendered his performance to purchase Carroll's one-half interest in Lot 1 when he purchased the house on Lot 2, transferred the car to Oldford in exchange for Oldford's one-half interest in Lot 1, and tendered $6,000 to

Carroll for her one-half interest. Based on his purchase of Oldfield's one-half share of Lot 1 and other facts set forth above, the trial court found that Johnson also had actual and exclusive possession of Lot 1 as of the time he closed on Lot 2.

In addition, neither Carroll nor Oldford acted as owners of Lot 1: Neither paid the property taxes or the Maintenance Commission fees until after Johnson paid the amounts necessary to prevent foreclosure. Neither maintained the property. Other than listing the property with real estate agents, Oldford had no involvement with the property after he accepted Johnson's car as payment for his one-half interest in Lot 1. Similarly, after Carroll wrote the May 11 letter, she did not even visit Lot 1 until at least 2006.

Conversely, Johnson did act as an owner of Lot 1 after Oldford signed the purchase and sale agreement and took Johnson's vehicle as payment for his (Oldford's) half of the lot. Johnson informed the real estate agents with whom Carroll and Oldford had listed Lot 1 that he had purchased Lot 1. And, when the Port Ludlow Maintenance Commission and Jefferson County both threatened to foreclose Lot 1 due to the unpaid fees and taxes, Johnson negotiated with the Commission to prevent the foreclosure and paid a portion of the fees and taxes owed. Because Johnson proved two of the "part performance" factors, the trial court properly ordered specific performance.

We are persuaded that this situation falls squarely within the purpose of the "part performance" doctrine. Carroll admitted at trial that when she wrote the May 11 letter, she intended to sell Lot 1 to Johnson for $6,000. Carroll did not change her mind until after the sale of Lot 2 to Johnson closed and she received only $134 from that sale (as a result of the size of

Lot 2's mortgage and her bankruptcy proceedings). Nevertheless, Carroll was still willing to sell Lot 1 to Johnson, but she now wanted more money than the amount she had previously promised to accept; and she knew that Johnson needed Lot 1 to expand the septic drain field for the house he had purchased on Lot 2. There was no uncertainty in Carroll's May 11 letter: Carroll promised to sell her interest in Lot 1 to Johnson for $6,000 when he purchased Lot 2.[11]

Conversely, were we to enforce the statute of frauds without regard to this recognized part-performance exception, we would not be preventing a fraud in accordance with the statute of frauds' purpose. Rather, we might be assisting Carroll to request from Johnson an unfair price for Lot 1, unrelated to its fair market value, because Johnson, who already owns Oldford's half interest in Lot 1, needs Lot 1 for a septic system for Lot 2, as all parties understood by the time Johnson sent the September 11 letter to Carroll.

III. Lis Pendens and Slander of Title

Carroll also argues that the trial court erred when it dismissed her counterclaims for wrongful filing of a lis pendens and slander of title because Johnson knew that a valid contract did not exist between them.[12] Again, we disagree.

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[11] Carroll argues that the trial court erred by ordering specific performance because Johnson failed to prove the existence of the contract and the contract terms by clear and unequivocal evidence. Where a plaintiff seeks specific performance rather than legal damages, he must prove the material terms by "'clear and unequivocal' evidence that 'leaves no doubt as to the terms, character, and existence of the contract.'" *Kruse v. Hemp*, 121 Wn.2d 715, 722, 853 P.2d 1373 (1993) (quoting *Powers*, 93 Wn.2d at 717). As we discuss above, the May 11 letter contained all material terms except the proper legal description of the property; thus, Johnson proved the material terms by "'clear and unequivocal' evidence." *Kruse*, 121 Wn.2d at 722 (quoting *Powers*, 93 Wn.2d at 717). And, as we hold above, the doctrine of part performance provides an exception to the statute of frauds here.

[12] Carroll does not appeal the trial court's dismissal of her tortious interference with a business

The elements of a slander of title claim include: "(1) false words; (2) maliciously published; (3) with reference to some pending sale or purchase of property; (4) which go to defeat plaintiff's title; and (5) result in plaintiff's pecuniary loss." *Rorvig v. Douglas*, 123 Wn.2d 854, 859, 873 P.2d 492 (1994). Words are not "maliciously published" where the publisher makes the statements in good faith with a "reasonable belief in their veracity." *Brown v. Safeway Stores, Inc.*, 94 Wn.2d 359, 375, 617 P.2d 704 (1980).

A "lis pendens" is any "instrument having the effect of clouding the title to real property, however named." RCW 4.28.328(1)(a). RCW 4.28.328(3) provides:

> *Unless the claimant establishes a substantial justification* for filing the lis pendens, a claimant is liable to an aggrieved party who prevails in defense of the action in which the lis pendens was filed for actual damages caused by filing the lis pendens, and in the court's discretion, reasonable attorneys' fees and costs incurred in defending the action.

(Emphasis added.) Filing a lis pendens is "substantially justified" where the claimant has a "reasonable, good faith basis in fact or law for believing [he has] an interest in the property." *S. Kitsap Family Worship Ctr. v. Weir*, 135 Wn. App. 900, 912, 146 P.3d 935 (2006).

It appears that the September 10 purchase agreement is the document to which the parties refer as the "lis pendens" that forms the basis for the slander of title counterclaim. The trial court concluded that Johnson "was fully justified in filing a lis pendens at the commencement of this action,[13] and that there is no merit whatsoever in [Carroll's] claims for slander of title [and] wrongful filing of a lis pendens." CP at 13, Conclusion of Law 11.

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contract counterclaim.

[13] It is unclear from the record whether Johnson filed an additional lis pendens in 2006 when he filed the complaint in this action.

The September 10 purchase agreement, which Johnson filed with the Jefferson County Auditor's office on November 23, 2004, states that Oldford and Carroll are selling Lot 1 to Johnson and includes a valid legal description. Carroll did not sign the document, but Oldford and Johnson did. The purchase agreement summarizes the "promise" Carroll made in the May 11 letter to sell Johnson her interest in Lot 1 for $6,000. The purchase agreement also describes Oldford and Johnson's agreement to exchange Johnson's vehicle for Oldford's interest in Lot 1. Under the circumstances here, Johnson had a "reasonable belief in [the] veracity" of the statements made in the purchase agreement[14] and had a "reasonable, good faith basis in fact or law for believing [he had] an interest in the property";[15] therefore, we affirm the trial court's dismissal of Carroll's counterclaims.

IV. Attorney Fees

Carroll requests attorney fees on appeal under RAP 18.1 based on her slander of title counterclaim, under *Rorvig,* and on her lis pendens counterclaim, under RCW 4.28.328(3). Because we affirm the trial court's dismissal of these counterclaims, Carroll is not entitled to attorney fees under either of these theories.

We affirm the trial court's specific performance order, affirm the dismissal of Carroll's counterclaims, and deny Carroll's request for attorney fees.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so

[14] *Brown*, 94 Wn.2d at 375.

[15] *S. Kitsap Family Worship Ctr.*, 135 Wn. App. at 912.

ordered.

Hunt, J.

Bridgewater, P.J.

Quinn-Brintnall, J.